IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.165 of 1993

Kuppusamy Chettiar .. Appellant

-Vs-

N.Kannan Udayar .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 17.9.1992 made in A.S.No.78 of 1990 passed by the Subordinate Judge, Villupuram, confirming the judgment and decree dated 15.11.1989 made in O.S.No.909 of 1987 passed by the District Munsif, Thirukkoivilur.

!For Appellant : Mr.M.Balasubramanian

^For Respondent : Mr.T.Dhanasekaran

:JUDGMENT

What is challenged in this second appeal is the judgment of the learned Subordinate Judge, Villupuram, made in A.S.No.78 of 1990, affirming the judgment and decree of the learned District Munsif, Thirukkoivilur, in O.S.No.909 of 1987, granting a decree in favour of the respondent/plaintiff.

2. The plaintiff sought for a money decree for a sum of Rs.8,890/- with subsequent interest, alleging that the first defendant borrowed a sum of Rs.7,000/- and executed a promissory note on 7.10.1984; that despite demand, neither the principal nor the interest was paid, and hence, the suit was filed.

3. Pending the suit, the first defendant died, and the second defendant was added as the legal representative of the first defendant. The suit was resisted by the second defendant inter alia stating that originally there was a sale deed executed by one Alamelu Ammal in favour of the plaintiff, that according to the plaintiff, there was a loss sustained by him; that the plaintiff was demanding that it should be made good, and under such circumstances, the first defendant executed a promissory note for Rs.4,000/- in 1973-74; that the debt under the promissory note was also paid off, and thus, the suit promissory note was only a fabricated one for the purpose of the suit, and hence, the suit claim was to be rejected.

4. The trial Court framed the necessary issues, tried the suit and decreed the same. Aggrieved, the defendant took it on appeal, which was also

dismissed by the first appellate Court. Hence, the second defendant has brought forth this second appeal.

5. At the time of admission, the following substantial question of law was formulated by this Court:

"Whether the Courts below were right in passing a personal decree as against the 2nd defendant/appellant while he had nothing to do with the suit transaction, and consequently, are not the decisions rendered by the Courts below much against the provisions of Sec.53 of the Civil Procedure Code and Sec.29 of the Negotiable Instruments Act?"

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions.

7. This Court is of the considered opinion that the appeal requires an order of dismissal by this Court.

8. The plaintiff laid the civil action for a money decree, alleging that the first defendant borrowed a sum of Rs.7,000/- from the plaintiff and executed Ex.A1 promissory note on 7.10.1984. In order to prove his claim, the plaintiff examined himself as P.W.1, one of the attesting witnesses as P.W.2 and the scribe to the document as P.W.3. Both the Courts below have discussed the evidence and have found that the evidence adduced on the side of the plaintiff was true. Not even one circumstance was brought by the defendants to disbelieve their evidence, and thus, the execution of and the consideration under Ex.A1 promissory note were duly proved. There was no impediment felt by the trial Court for granting a decree, since the defence put forth by the defendants was highly improbable and unbelievable. The first appellant Court has rightly confirmed the view taken by the trial Court.

9. Both the Courts below have granted a personal decree as against the appellant/second defendant. Needless to say that a decree was to be passed against the first defendant, if he was alive, since it was he, who borrowed and executed the suit promissory note. But, the first defendant died pending the suit, and hence, his son was added as the second defendant. Thus, the second defendant could be made liable only to the extent of the estate, that came to his hands from his father, the first defendant, and nothing more. In such circumstances, the judgments of both the Courts have got to be modified, and the second defendant is liable to pay the decree amount only from and out of the properties that came to his hands from his father, the first defendant.

10. With the above modification in the judgments and decrees of the lower Courts, this second appeal is dismissed. The parties shall bear their costs.

Index: yes
Internet: yes

To:

1. The Subordinate Judge
Villupuram
2. The District Munsif
Thirukoivilur

3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/